IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01/04/2004

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THE HONOURABLE MR. JUSTICE A.S. VENKATACHALAMOORTHY
AND
THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.10908 of 2002
and
W.P.M.P.NO.14663 of 2002

A. Radhakrishnan
Proprietor of
M/s. Sri Mahalakshmi Enterprises,
Ulundurpet,
Villupuram District. .. Petitioner

-Vs-

1. The Registrar,
Tamilnadu Taxation Special Tribunal,
Singaravelan Maligai, II Floor,
Chennai 600 001.

2. The Appellate Assistant
Commissioner (CT),
Cuddalore.

3. The Deputy Commercial Tax Officer,
Ulundurpet. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.V. Sundareswaran

For Respondents : Mr.T. Ayyasamy
Special Govt. Pleader (Taxes)

:J U D G M E N T

P.K. MISRA, J.

Petitioner, A. Radhakrishnan, is the Proprietor of M/s. Sri Mahalakshmi Enterprises. Petitioner is a registered dealer under the Tamil

Nadu General Sales Tax Act, 1959. For the assessment year 1998-99, the petitioner had shown a taxable turnover of Rs.1,23,68,517/-. However, the third respondent did not accept the return and subsequently issued pre-assessment notice, which was served on the petitioner. The petitioner filed his objection. Thereafter, the order of assessment was passed on 19.4.2000. It was sent by registered post in the name of the petitioner. It is the case of the petitioner that such order of assessment had not been served on him and subsequently learning about the steps taken by the Department for realisation of the amount, he applied for a certified copy of the order and soon thereafter filed appeal. The appeal was rejected by the appellate authority on the ground that such appeal had not been presented within the prescribed period of limitation. Such order of the appellate authority was challenged before the Tamil Nadu Taxation Special Tribunal. The Tribunal on reconsideration of the materials on record came to hold that the registered letter in question was delivered to the dealer on 17.5.2 000 and as such, the appeal was beyond the prescribed period of limitation. Noticing that the appellate authority had only power to condone the delay of 30 days and the appeal had been presented much beyond the extended period of limitation, the Tamil Nadu Taxation Special Tribunal confirmed the order passed by the appellate authority. These orders are being challenged in the present writ petition.

2. Mr.V. Sundareswaran, appearing for the petitioner, first contended that there was no material on record to indicate that the order of assessment was served on the dealer as the postal acknowledgement due had not been produced. It is therefore contended that the period of limitation should commence from the date when the certified copy was issued to the petitioner and so calculated, the appeal was within the period of limitation.

Mr.T. Ayyasamy, Special Govt. Pleader, appearing for the respondents has resisted such submission.

3. The conclusion of the appellate authority and the Tamil Nadu Taxation Special Tribunal to the effect that assessment order had been served through registered post is based on a letter of the Postal Department indicating that the registered letter in question had been delivered on the addressee. In law there is a presumption that the registered letter was served on the addressee. Such presumption is strengthened in the present case by the intimation given by the postal authorities regarding delivery of the letter to the addressee. As against such materials, merely on the basis of the affidavit filed by the representative (a registered practitioner) before the appellate authority, it cannot be held that the presumption regarding service, which had been strengthened by the subsequent letter of the Postal Department, had been in any way rebutted. It is to be noticed that the affidavit filed before the appellate authority was by a registered practitioner and not by the petitioner himself. Moreover, the appellate authority and the Tamil Nadu Taxation Special Tribunal have come to a particular factual conclusion. It is not within the domain of the High Court in a writ jurisdiction to come to any different factual conclusion. In such view of the matter, it must be held that the assessment order had been

delivered through registered post on the dealer and the appeal was not presented within the prescribed period of limitation.

4. Learned counsel for the petitioner had submitted in alternative that even assuming that appeal was barred by limitation, the appellate authority had ample jurisdiction to condone the delay even beyond the period of 30 days. Such submission of the learned counsel for the petitioner cannot be accepted in view of the specific decision on the point by the Division Bench of this Court reported in 2002(1) CTC 40 6 (INDIAN COFFEE WORKER□S CO-OP. SOCIETY LTD, PONDICHERRY v. COMMISSIONER OF COMMERCIAL TAXES, CHEPAUK, CHENNAI) to the effect that the appellate authority has no jurisdiction to condone the delay if such appeal is filed beyond the extended period of thirty days. In other words, it has been held that the appellate authority has jurisdiction to condone delay upto the period of 30 days only and not beyond that. As a matter of fact, such decision of the Division Bench receives considerable strength from the decision of the Supreme Court reported in 2001(4) CTC 213 (UNION OF INDIA v. M/s. POPULAR CONSTRUCTION CO.), wherein, while considering the provision contained in the Arbitration and Conciliation Act, 1996, the Supreme Court observed that the provision contained in such Act for condonation of delay upto a particular period amounts to exclusion of the applicability of Section 5 of the Limitation Act.

5. Learned counsel appearing for the petitioner has further submitted that even assuming that the appeal filed was barred by limitation and the appellate authority has no power to condone the delay, original order of assessment is apparently bad and should be quashed in exercise of jurisdiction under Article 226 of the Constitution.

6. Learned counsel for the Department has resisted such submission on the ground that since the petitioner had failed to avail of the alternative remedy available under the statute, the original order of assessment cannot be challenged in this writ petition. We are not inclined to accept such proposition of the learned counsel for the Department put forth in such a broad manner. We are aware that in appropriate case, the High Court, while exercising jurisdiction under Article 226 of the Constitution, can interfere with the order even though alternate remedy was not availed. However, we find in the present case that the petitioner has not specifically challenged the order passed by the assessing authority and the prayer in the writ petition is to quash the order of the appellate authority and to direct such appellate authority to entertain the appeal and dispose of the same on merit. In the absence of any specific challenge with regard to order of assessment, we do not consider the question as to whether the order passed by the assessing authority is to be quashed by exercise of jurisdiction under Article 226 of the Constitution.

7. For the aforesaid reasons, we do not find any merit in the writ petition, which is accordingly dismissed. No costs. Consequently, WPMP.No.14663 of 2002 is closed.

Index : Yes
Internet : Yes

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To

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